

App. No. 09/611,355
Amdt. Dated July 6, 2004
Reply to Office Action of May 5, 2004
Atty. Dkt. No. 6550-100

REMARKS/ARGUMENTS

This reply is responsive to an Office Action dated on May 5, 2004. Claims 31, 42, 45, 47, 55 and 69 have been amended, and claims 32-41, 43, 44, 46, 48-54, 56-61 and 70-71 were previously presented. The withdrawn claims are cancelled without prejudice to filing a divisional application.

The amendments to the claims were clarifying amendments, and there is no intent to surrender equivalence. The amendments do not raise new issues, and do not require a new search. Thus, the amendments comply with 37 CFR § 1.116(b).

Election/Restrictions

Claims 1-30 and 62-68 have been withdrawn as non-elected. A complete reply allegedly must include cancellation of non-elected claims or other appropriate action. Applicant intends to file a divisional patent application to include the non-elected claims, and has cancelled the withdrawn claims for that purpose.

Claim Rejections – 35 U.S.C. Section 112

Claim 69 has been rejected under 35 U.S.C. Section 112 as lacking an antecedent basis.

Claim 69 has been amended to remedy the lack of antecedent basis for the limitation of "said response personnel description." Thus, claim 69 as amended is now more clear and definite.

Claim Rejections – 35 U.S.C. Section 103

Claims 31-61, 69-71 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Iliff U.S. patent 6,022,315 in view of Reuss U.S. patent 6,364,834 in further view of Vogue Healthbeat - Vital Signs, They Deliver Article, September 1998 URL: <<http://www.ampmdoc.com/media/press/vogue.htm>>.

App. No. 09/611,355
Amdt. Dated July 6, 2004
Reply to Office Action of May 5, 2004
Atty. Dkt. No. 6550-100

The Iliff patent disclosed a method using a computerized medical diagnostic treatment advice system, which provides medical advice to the general public over networks. In this regard, a patient computer can access a website over a network such as the Internet. The patient computer can then interact with the website, whereby patient information concerning a medical condition is analyzed according to the algorithm of the computer software being used. As a result of the information received from the patient, a message is sent to the patient to provide a diagnosis to the patient.

Therefore, the Iliff patent discloses a system for providing advice, but not for providing medical care as presently claimed by the Applicant. Moreover, the Iliff method does not disclose, amongst other things, "accessing a computer data base to select appropriate personnel according to a response personnel description to make a non-emergency house call when an emergency house call is determined to be not appropriate and a non-emergency house call is determined to be appropriate." Instead, the Iliff system merely provides medical advice.

In fact, the Iliff patent teaches away from the concept of providing medical care as presently claimed by the Applicant. Iliff teaches that by merely providing medical advice, "many diseases could be prevented." Column 1, lines 40-51. As such, Iliff discloses providing self-diagnostic medical advice to assist a patient. By providing medical advice on the belief that diseases could be prevented on suitable advice alone, he teaches away from the applicant's claimed approach of "accessing a computer data base to select appropriate personnel according to a response personnel description to make a non-emergency house call when an emergency house call is determined to be not appropriate and a non-emergency house call is determined to be appropriate."

The Reuss patent discloses a method for remotely monitoring multiple medical parameters in a medical monitoring system. The medical monitoring system of Reuss enables the transmission of a medical alert message from a patient to remote access

App. No. 09/611,355
Amdt. Dated July 6, 2004
Reply to Office Action of May 5, 2004
Atty. Dkt. No. 6550-100

devices. See Column 3, lines 35-60. The Reuss method automatically sends the medical alert message on discovering an alarm condition or the patient can transmit this information himself or herself to a central monitoring system. See column 5, lines 37-64. Thus, the Reuss patent discloses a medical alert system for sending pre-recorded alarm messages to health care providers in emergency situations.

It appears that the Reuss medical monitoring system is employed so that "screening information from the patient" is not required to "determine the severity of the medical condition of the patient," since vital signs data and physiological waveform data are formatted and delivered over RF to wireless remote access devices for use by a caregiver. See column 3 lines 35-60. Thus, there is no teaching, nor suggestion, of "executing a computer program to review said medical information and to request screening information from the patient to determine the severity of the medical condition of the patient." Reuss teaches away from this concept by disclosing a simple alerting system where pre-recorded information is routed directly to a caregiver using automatic health monitoring equipment, thereby negating the requirement for "executing a computer program to review said medical information and to request screening information from the patient" since the medical information disclosed by Reuss is pre-recorded, and sent in an emergency.

Additionally, there is no disclosure nor suggestion in the Reuss patent of providing a method for "determining whether or not the patient is appropriate to receive a non-emergency house call, in response to screening information received from the patient." Instead, the Reuss medical alert method is intended for emergency use only.

Additionally, the Reuss method does not disclose "sending a message to the patient recommending he or she not receive a non-emergency house call at this time when both an emergency house call and a non-emergency house call are determined to be not appropriate". Instead, the Reuss method is a medical alert method for

App. No. 09/611,355
Amdt. Dated July 6, 2004
Reply to Office Action of May 5, 2004
Atty. Dkt. No. 6550-100

promptly dispatching medical personnel on an emergency basis only, and there is not teaching, nor suggestion, or providing a non-emergency house call.

The Vogue article discloses a service to dispatch a physician for non-emergency services. In the last Office Action, it is stated that the Vogue article urges those with emergencies to call 911. The last Office Action also suggests that the urging of patients to call 911 implies "determining whether or not the patient is appropriate to receive a non-emergency house call, in response to screening information received from the patient."

It is respectfully pointed out that to "not receive a non-emergency house call" does not imply the receipt of an emergency house call. As such, "sending a message to the patient recommending he or she not receive a non-emergency house call at this time when both an emergency house call and a non-emergency house call are determined to be not appropriate" is not taught, nor suggested, by the Vogue article. Moreover, the Vogue article does not teach, nor suggest "executing a computer program for determining responsive to a determination that the patient does not require emergency care, whether or not the patient is appropriate to receive a non-emergency house call." Such a multiple determination process is not taught, nor suggest by Vogue, and thus expensive and unnecessary house calls may inadvertently be made pursuant to the system disclosed in the Vogue article. To elucidate this point, clarifying amendments have been made to independent claims 30, 47, and 69.

In short, Iliff teaches a self-diagnostic arrangement to avoid having to seek healthcare providers. Reuss, on the other hand, teaches an emergency response system where a prerecorded message is sent from the patient to summons a healthcare provider on an emergency basis. There is no suggestion in Reuss of performing self-diagnostic routines, but instead it only addresses the speedy delivery of healthcare services. The Vogue article merely adds the teaching that a patient can call a central service, which in turn dispatches a physician to make a house call. There

App. No. 09/611,355
Amdt. Dated July 6, 2004
Reply to Office Action of May 5, 2004
Atty. Dkt. No. 6550-100

is no disclosure, nor suggestion of the decision making process as claimed by the Applicant.

None of the cited references disclose, nor suggest, the multiple decision making process as claimed by Applicant. Iliff only determines whether or not an emergency call is appropriate, but does not make a decision as to whether or not a house call should be made on a non-emergency basis. This, of course, is not the purpose of the Iliff self-diagnostic arrangement as it is designed with the idea of avoiding the need for medical services.

The Reuss patent does not make any decision as to whether or not a non-emergency house call is to be made, because the whole purpose of the Reuss system is to respond quickly to emergency calls only. It is a medical alert system.

The Vogue article merely distinguishes between an emergency condition and the sending of a physician to make a house call. It does not suggest the use of computer software to determine whether the house call should or should not be made on a non-emergency basis. Thus, unnecessary house calls could be made inadvertently.

Not one of the cited references discloses "executing a computer program for determining responsive to a determination that the patient does not require emergency care, whether or not the patient is appropriate to receive a non-emergency house call." Additionally, none of the cited references disclose "sending a message to the patient recommending he or she not receive a non-emergency house call at this time when both an emergency house call and a non-emergency house call are determined to be not appropriate." Such a two step process of determining whether or not an emergency house call is required, and of then determining whether or not a non-emergency house call is required, is not disclosed, nor suggested by any of the references, nor any combination of them.

App. No. 09/811,355
Amdt. Dated July 6, 2004
Reply to Office Action of May 5, 2004
Atty. Dkt. No. 8550-100

Concerning the motivation to combine the teachings of the references, it is stated in the Office Action that "obviousness is not based on express suggestion, but what references taken "collectively would suggest." It is also stated that "it is respectfully submitted that explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner."

While Applicant agrees with these principles, there is still a lacking of motivation to combine the references, even when one considers the references taken collectively and using logic and scientific reasoning. For example, Iliff teaches self-diagnostic techniques to avoid physician contact. This would teach away from Applicant's technique of providing health care. The Reuss patent discloses an emergency response system, and thus teaches away from a self-diagnostic avoidance of health care provision as taught by Iliff. The brief Vogue article merely suggests that one can call a doctor for making a house call, without mentioning any diagnosis being explored prior to making the house call as taught by Iliff. The article also suggests that in an emergency, the patient call "911" as opposed to the rapid response system of Reuss.

Thus, the references teach away from Applicant's multi-level, multi-decisional response system. As a result, all three of the cited references fail to disclose, or suggest, such a multi-level decision making automatic system, and thus, in all three references, especially in the Reuss patent and the Vogue article, physicians can make expensive house calls when they are not appropriate, and thus, time and money may be wasted.

In summary, none of the cited references discloses the multilevel decisional method as presently claimed. Also it is respectfully asserted that there is no motivation to combine the teachings of the cited references, since they teach away the applicant's claimed method.

App. No. 09/611,355
Amdt. Dated July 6, 2004
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Atty. Dkt. No. 6550-100

Therefore, claims 31-61, and claims 69, 70 and 71, patentably distinguish over the Iliff patent, either taken alone or in combination with the Reuss patent and the Vogue article, as well as the other cited art of record.

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Respectfully submitted,

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